IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1320 OF 2007

Murud Taluka Co-operative
Supari Va Vikri Sangh Ltd. ..Applicant

Vs.

Fakruddin Najamuddin Khatib
and anr. ..Respondents

Mr. Sagar Joshi for applicant.
Ms. Teja Katdare i/by Ms. Alpa Javeri for respondent no.1.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 26, 2007.

P.C.:

1. Heard Mr. Joshi the learned counsel for the applicant. This is an application for seeking special leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned JMFC at Murud in Summary Criminal Case No.279 of 2005.

2. As per the complainant the accused had taken a mortgage loan in the sum of Rs.3,15,684/- from his loan Account No.122. He had undertaken to repay the loan within the prescribed period and for repayment of the said loan he had given a cheque bearing No.001486

dated 5/10/2005 from his Savings Account in the sum of Rs.1,78,997/- and drawn on the Raigad District Central Co-operative Bank Ltd., Murud Branch. The said cheque was presented on 6/10/2005 for encashment and it was dishonoured on the ground "funds insufficient". Consequently, the present applicant issued demand notice through his Advocate on 14/10/2005, which was received by the accused on 15/10/2005 and he gave reply through his Advocate on 24/10/2005. Finally the applicant filed Summary Criminal Case No.279 of 2005 under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of cheque for sum of Rs.1,78,997/-.

3. Complainant had examined its Chairman Shri Muajjam Hasaware, while accused stepped in the witness box. On assessment of the evidence as adduced by both the parties, the trial court held that all the ingredients of Section 138 were proved by the complainant, except the existence of debt or any other legally enforceable liability that the accused was required to discharge in favour of the complainant.

4. The pass-book of the loan account bearing No.122 was brought on record at Exh.31 and it showed

that as on 6/7/2005 the loan liability was nil. This indicated that as on 6/7/2005 there was no debt that the accused was required to discharge or repay. It was also not the case of the complainant that the accused had borrowed some fresh amount or some liability in terms of debt that was created after 6/7/2005 and, in fact, in the notice dated 14/10/2005 or in the complaint there was no such ground taken. It was clear that the loan was to be repaid in 21 monthly equated instalments and it started from July and if that be so the fact that as on 6/7/2005 there was no loan liability shown, clearly indicated that the dishonoured cheque was not drawn by the accused for repayment of debt or any legally enforceable financial liability.

5. Under these circumstances, the reasoning set out by the trial court in support of the order of acquittal does not call for reconsideration at the hands of this court and hence, leave to appeal is rejected. The application is rejected.

(B.H. Marlapalle,J.)